

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

EDWARD FULCHER,

Applicant,

v.

Civ. 14-812 MV/GBW

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND  
RECOMMENDED DISPOSITION**

This matter comes before the Court on Applicant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence. *Doc. 1*. Applicant argues that the Court erred when it sentenced him (1) by failing to give him credit for time spent in federal custody prior to sentencing and (2) by failing to consider the newly-proposed amendment to U.S.S.G. § 2D1.1. He further argues that he suffered ineffective assistance of counsel because counsel did not address these two matters at sentencing.


The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on December 8, 2014. *Doc. 12*. He recommended rejecting Applicant's first argument because the Court lacked the authority to give Applicant credit for time in presentence confinement. *Doc. 12* at 4-5. The Magistrate Judge recommended rejecting the second argument because the amendment on which Applicant relied was not yet in effect at the time of sentencing. *Id.* at 5. Finally, because

the first two arguments raised by Applicant lacked merit, the Magistrate Judge found that counsel's failure to raise them was not ineffective. *Id.* at 5-6.

Applicant's objections to the PFRD were due May 1, 2015. He has filed none despite the Court's repeated extensions of his time to do so. *See doc. 15* (order granting fourteen-day extension); *doc. 21* (sixty-day extension); *doc. 25* (thirty-day extension).<sup>1</sup>

Furthermore, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, *doc. 12*, is ADOPTED and Applicant's Motion to Vacate, Set Aside or Correct Sentence, *doc. 1*, is DENIED.

  
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MARTHA VAZQUEZ  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The Court's final extension afforded thirty days rather than the sixty that Applicant had requested. Even if the Court had granted sixty days, however, Applicant would have nonetheless failed to file objections within that time frame and has yet to seek another extension.